IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 179 of 2003
in
SPECIAL CIVIL APPLICATION No 516 of 2003
with
CIVIL APPLICATION No. 1221 OF 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
YES

2. To be referred to the Reporter or not? YES, but only in Section of Unreported Judgements of law journal concerned. :

3. Whether Their Lordships wish to see the fair copy of the judgement ? : NO
No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? No :

ABHUJI KARSHAJI THAKORE

Versus

THAKORE JITABEN MANCHAJI

Appearance:

1. LETTERS PATENT APPEAL No. 179 of 2003

MR PK JANI for Appellant

MR NK MAJMUDAR for Respondent No. 1

MR MS RAO, AGP, for Respondent No. 2

MR HS MUNSHAW for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 05/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Pursuant to order dated May 5, 2003, passed in Civil Application No.2125 of 2003, which was filed in Civil Application No.1221 of 2003 filed in Letters Patent Appeal No.179 of 2003 arising out of interim order dated February 13, 2003 passed in Special Civil Application No.516 of 2003, Letters Patent Appeal No.179 of 2003 is taken up for final disposal today.

2. Instant appeal, which is filed under Clause 15 of the Letters Patent, is directed against interim order dated February 13, 2003 passed by the learned Single Judge in Special Civil Application No.516 of 2003 by which operation of order dated October 5, 2002 passed by the District Development Officer, Patan, suspending the respondent No.1 from the office of Sarpanch of Ablauva Gram Panchayat, Taluka & District : Patan because of institution of criminal proceedings in respect of offences involving moral turpitude, has been stayed during the pendency and final disposal of Special Civil Application No. 516 of 2003.

3. The respondent No.1 is elected as Sarpanch of Ablauva Gram Panchayat, Taluka & District : Patan. A First Information Report is lodged by Godadbhai Punjabhai Bhangi, a resident of village Ablauva, against the respondent No.1 and her husband for the alleged commission of offences punishable under Sections 504 & 506(2) read with Section 114 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, with Vagadod Police Station, which is registered as C.R.No.63/2002. During the course of investigation of the said F.I.R., the respondent No.1 and her husband were arrested on August 19, 2002 and were produced before the learned Magistrate having jurisdiction in the matter. It is stated at the Bar that the competent Court had released the respondent No.1 and her husband on bail on the same day. The Deputy District Development Officer, Patan was in receipt of the complaint filed by Godadbhai.P.Bhangi. The Deputy District Development Officer, therefore, addressed a letter to the District Development Officer,

Patan informing him that a criminal complaint was lodged against the respondent No.1 and that appropriate action be taken against her. On receipt of report from the Deputy District Development Officer, the District Development Officer, Patan perused the papers and issued a notice dated August 26, 2002 to the respondent No.1 calling upon her to show cause as to why she should not be suspended from the office of Sarpanch in view of institution of criminal proceedings relating to offences involving moral turpitude. The respondent No.1 submitted her explanation dated September 30, 2002 and was heard in person by the District Development Officer. After hearing the learned advocate of the respondent No.1 and considering the explanation offered by the respondent No.1, the District Development Officer by order dated October 5, 2002 suspended the respondent No.1 from the office of Sarpanch of Ablauva Gram Panchayat, as he was satisfied that criminal proceedings in respect of offences involving moral turpitude have been instituted against the respondent No.1.

4. Feeling aggrieved, the respondent No.1 preferred an appeal before the State Government as postulated by sub-section (3) of Section 59 of the Gujarat Panchayats Act, 1993 ("the Act" for short). The Additional Development Commissioner, who heard the appeal, dismissed the same by order dated January 16, 2003. Thereupon, the respondent No.1 has invoked extraordinary jurisdiction of the High Court under Article 226 of the Constitution by filing Special Civil Application No. 516 of 2003 and challenged legality of order dated October 5, 2002, passed by the District Development Officer, Patan, suspending her from the office of Sarpanch as well as order dated January 16, 2003, passed by the Additional Development Commissioner dismissing her appeal.

5. The petition was placed for admission hearing before the learned Single Judge and by order dated February 13, 2003, the learned Single Judge has admitted the petition and stayed operation of order dated October 5, 2002 passed by the District Development Officer, Patan suspending the respondent No.1 from the office of Sarpanch, during the pendency and final hearing of the petition. The stay order granted by the learned Single Judge has given rise to instant appeal.

6. The appeal was placed for admission hearing before the Division Bench comprising J.N.Bhatt,J.(as he then was) and K.A.Puj,J. on February 18, 2003 and after hearing the learned counsel of the appellant, the Court has admitted the appeal and also expedited its hearing.

The appellant has filed Civil Application No.1221 of 2003 in Letters Patent Appeal No.179 of 2003, for stay of interim order passed by the learned Single Judge. The said application was also notified for hearing before the same Bench on February 18, 2003 and after hearing the learned advocate of the appellant, following order is passed :-

"Rule. Pursuant to the interlocutory order of the learned Single Judge, the respondent, who was under suspension, and suspension order was implemented, he was again put out of suspension. It is, therefore, contended that at present the respondent is not under suspension and that the revocation or the restoration of the suspension order was due to the interlocutory order of the learned Single Judge. It is, in this context, it has been submitted that the status-quo ante, means prior to the filing of the Letters Patent Appeal, is sought, and the status and position of respondent, prior to the passing of the interlocutory order of the learned Single Judge, needs, in the circumstances, to be restored.

2. After having taken into consideration the legislative phraseology, the intent and object, and admitted factum of initiation of criminal proceedings against the respondent (Sarpanch), pursuant to the F.I.R. being C.R.No.I.63 of 2002 lodged before Vaghdod Police Station, Sub-District : Patan, for the alleged offences punishable under Sections 504, 506(2) and 114 of the Indian Penal Code, and Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and resultant arrest and subsequent release from the custody upon bail and the proceedings before the District Development Officer and thereafter on appeal before the Development Commissioner, the ad-interim order of suspension, recorded by the appellant, obviously, is required to be revived. Thus, the original impugned order of suspension dated 5th October, 2002 shall operate until the final hearing. Direct service is permitted."

7. Mr.P.K.Jani, learned counsel of the appellant, submitted that in view of institution of criminal proceedings against the respondent No.1 for the offences punishable under Sections 504, 506(2) read with Section 114 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989, the District Development Officer was justified in concluding that criminal proceedings were instituted against the respondent No.1 involving moral turpitude and, therefore, order suspending the respondent No.1 from the office of Sarpanch should not have been stayed by the learned Single Judge. What was claimed by the learned counsel of the appellant was that by granting interim relief, the learned Single Judge has allowed the petition at admission stage and, therefore, the appeal should be accepted. The learned counsel of the appellant emphasised that the learned Single Judge was not justified in granting mandatory interim injunction on the facts of the case and, therefore, the impugned order should be set aside.

8. Mr.N.K.Majmudar, learned counsel of the respondent No.1, pleaded that the order impugned in the appeal is not a judgment within the meaning of Clause 15 of the Letters Patent and as the appeal is not maintainable, the same should be dismissed. It was argued that the incident referred to in the complaint of Godadbhai Punjabhai Bhangi has no reference to the discharge of duties by the respondent No.1 as Sarpanch and, therefore, on the basis of the said complaint, the respondent No.1 could not have been suspended from the office of Sarpanch. After taking the Court through the complaint, it was pleaded that a bare reading of the complaint itself make it evident that the same is filed with malafide intention by a person, who had lost election and who has filed Suit challenging the election of the respondent No.1 and, therefore, the same should not have been considered or taken into account by the District Development Officer,Patan for the purpose of suspending the respondent No.1 from the office of Sarpanch. The learned counsel stressed that the offences alleged to have been committed by the respondent No.1 do not involve moral turpitude and, therefore, the District Development Officer, Patan, had no jurisdiction to exercise powers under Section 59(1) of the Gujarat Panchayats Act, 1993. It was also pleaded that power of the Court to grant mandatory interim relief can hardly be doubted and as the learned Single Judge has exercised discretion judicially, more particularly when the petition was not contested by the respondents, the discretion exercised by the learned Single Judge should not be interfered with by this Court in instant appeal. Lastly, it was claimed that in the present day politics possibility of institution of false or frivolous complaint against elected member by political rivals, cannot be ruled out and, therefore, the appeal filed against interim order should be dismissed. In support of his submissions, the learned counsel placed

reliance on the decisions in (i) R.M.Patel v. Additional Development Commissioner & Anr. 1992(2) G.L.R. 1204, (ii) K.R.Patel v. J.J.Desai, 1994(1) G.L.R.344, (iii) S.R.Ahir v. V.H.Shah & Ors. 1998(1) G.L.R. 512, (iv) B.S.Malek v. District Development Officer, Mehsana & Anr. 1999(2) G.L.H.963, and (v) V.N.Rabari & Ors. v. State of Gujarat & Ors. 2001(3) G.L.H.681.

9. Mr.J.M.Barot, learned advocate appearing for Mr.H.S.Munshaw, learned counsel of the respondent No.1, has adopted the arguments advanced by Mr.P.K.Jani, learned counsel of the appellant; whereas Mr.Mehul Rathod, learned advocate appearing for the newly added respondent No.4 in Special Civil Application No.516 of 2003, has adopted the arguments advanced by Mr.N.K.Majmudar,learned advocate of the respondent No.1 and, therefore, it is not necessary to refer to their arguments in detail.

10. It may be mentioned that before beginning the hearing of the appeal, it was suggested to Mr.N.K.Majmudar, learned advocate of the respondent No.1 that he may not insist for hearing of the Letters Patent Appeal immediately and that he may move the learned Single Judge for expeditious hearing of Special Civil Application No.516 of 2003 because if the Court is called upon to decide the issue raised in the appeal, it may affect the case of the respondent No.1 to be advanced by the parties before the learned Single Judge. However, Mr.N.K.Majmudar, learned advocate of the respondent No.1, has insisted that the appeal be disposed of on merits and that is how the points raised in the appeal are considered by this Court.

11. The plea that appeal against order granting mandatory interim relief is not maintainable and, therefore, should be dismissed, cannot be accepted. In K.R.Patel (supra), abatement was set aside by a learned Single Judge while hearing Civil Revision Application. That order was subjected to challenge in Letters Patent Appeal. The Full Bench of this High Court has held that no lis between the parties was decided by the Court when abatement was set aside, nor there was determination of rights and liabilities of the parties, and by setting aside the abatement, the plaintiff was allowed to make progress towards determination of rights. Therefore, it was held that the appeal was not maintainable. Again, in V.N.Rabari (supra), Division Bench of this Court has taken the view that when interim relief, grant of which would amount to granting the main relief claimed in the petition is refused, the appeal is not maintainable. In

our view, the principles of law laid down in the above quoted decisions are not applicable to the facts of the present case. In instant case, the learned Single Judge has not only touched merits of the matter, but allowed the petition without adjudicating the claims raised in the petition. It may be stated that the District Development Officer, Patan could not present his case before the learned Single Judge and could file his reply after the order was dictated by the learned Single Judge. The Supreme Court has deprecated in catena of reported decisions practice of grant of interim relief which is tantamount to allowing the petition at initial stage. Further, it is wrong to contend that rights of the parties are not decided by the impugned order. By suspending operation of the order passed by the District Development Officer, the learned Single Judge has permitted the respondent No.1 to discharge her functions as Sarpanch of Ablauva Gram Panchayat. The scheme of the Gujarat Panchayats Act, 1993 is such that vast powers are conferred on the Sarpanch of Gram Panchayat in the administration of Panchayat. Moreover, the whole exercise undertaken by the District Development Officer pursuant to statutory rights conferred on him by Section 59(1) of the Gujarat Panchayats Act, 1993, is rendered nugatory. Under the circumstances, we are of the opinion that the principle laid down by the Division Bench of this Court in Registrar, High Court of Gujarat v. B.J.Patel, Chief Judicial Magistrate and Joint Civil Judge (S.D.), Vadodara, 1997(2) G.L.R.1660, would be applicable to the facts of the present case. The pertinent observations made by the Division Bench in Paragraphs 25 & 26 are as under :-

"25. In case of any judgment, the Letters Patent Appeal could be resorted to invoking clause 15. No doubt, the expression "judgment" is not statutorily defined or articulated, but "judgment" means order or decision permanent or temporary, when rendered on the merits of the matter and which affects also the merits. So, it is not the type of judgment, but the resultant effect of that order which must enter into consideration. It would be profitable to refer to clause 15 of the Letters Patent which reads as under :

'15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction: And we do further ordain that an appeal shall lie to the said High Court of Judicature at

Madras, Bombay, fort William in Bengal from the judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of Sec.107 of the Government of India Act,or in the exercise of criminal jurisdiction of one Judge of the said High Court or one Judge of any Division Court, pursuant to Sec.108 of the Government of India Act, and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Sec.108 of the Government of India Act, made on or after the first day of February 1929 in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal, but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us. Our heirs or successors in Our or Their Privy Council as hereinafter provided.'

The proposition advanced by the learned senior Counsel Mr.Mehta that L.P.A. against the interlocutory order of a single Judge is not maintainable is running counter to the ratio of the decision of this Court rendered in Civil Application No.2207 of 1995 in Letters Patent Appeal No.893 of 1995 in the Secretary, Revenue Department v. Varsanbhai Rajubhai Rathwa & Ors. decided on 16th September, 1995. A Division Bench (Coram: R.A.Mehta, Actg.C.J. and S.K.Keshote,J.) have enunciated and expounded as to what is the expression "judgment" incorporated in clause 15 of the L.P. relying on a decision

of the Calcutta High Court and also of the Apex Court.

26. Similar contention raised before this Court in that case was negatived and it was held that interlocutory order of this nature is falling within the parameter and purview of clause 15 of the Letters Patent and therefore, the appeal is competent and maintainable. Reliance was placed on the decision of the Apex Court in the case of Shantikumar v. The House Insurance Co. of New York, AIR 1974 SC 1719. The observations made in para 19 in the said decision of the Hon'ble Apex Court are pertinent. They are as follows :

> 'In finding out whether the order is a judgment within the meaning of clause 15 of the Letters Patent it has to be found out that the order affects the merits of the action between the parties by determining some right or liability. The right or liability is to be found out by the Court. The nature of the order will have to be examined in order to ascertain whether there has been a determination of any right or liability.'

The Apex Court has while enunciating the ratio in relation to the expression "judgment" had approved the decision of the Calcutta High Court in the case of Justice for Peace for Calcutta v. Oriental Gas Co. The observations made by the Hon'ble Calcutta High Court in para 10 are very material which reads as under :

> 'We think that "judgment" means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined.'

In the said decision before this Court, an interim order came to be passed in case of a dispute of seniority list and by virtue of the

> interim order, the learned single Judge had held that the petitioners were entitled to the relief against reversion. That interim order was questioned in Letters Patent Appeal and in that submission was raised that the interim order or interlocutory order is not a judgment and therefore, appeal is not maintainable in view of clause 15 which was rightly rejected and endorsed the view taken by this Court in the earlier decision relying on the decision of the Supreme Court. With the result, the submission whereby a legal missile sought to be launched against the present appeal is frustrated and the submission is required to be rejected. Accordingly, we reject it."

Further, the tests as to which order should be regarded as a judgment within the meaning of Clause 15 of the Letters Patent are laid down by the Supreme Court in (i) Central Mine Planning and Design Institute Ltd. v. Union of India and anr., (2001)2 SCC 588, and (ii) Shah Babulal Khimji v. Jayaben D.Kania and anr. AIR 1981 SC 1786 as well as by the Division Bench of this Court in Indulal Kanaiyalal Yagnik v. Prasannadas D.Patwari, 1972 GLR 269. Applying those tests to the facts of the present case, this Court is of the opinion that instant appeal, which is directed against mandatory interim relief which has the effect allowing the petition at admission stage and has far reaching consequences, is maintainable.

12. The contention that the incident mentioned in the complaint of Mr.Godadbhai P.Bhangi has no reference to the performance of duties by the respondent No.1 as Sarpanch and, therefore, powers under Section 59(1) of the Act could not have been exercised by the District Development Officer, Patan, is devoid of merits. It may be stated that Section 59(1) of the Act has no reference to the duties to be performed by a Sarpanch or Up-Sarpanch. What is provided in Section 59(1) of the Act is that if criminal proceedings in respect of an offence involving moral turpitude is instituted, District Development Officer would be justified in suspending the Sarpanch or Up-Sarpanch, as the case may be, from the office held by him. The concept that a Sarpanch or Up-Sarpanch or a member of Panchayat can be removed from office if he has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under the Act or has become incapable of performing his duties and

functions under the Act, is to be found in Section 57 of the Act. Those contingencies need not be applied when power is sought to be exercised by the District Development Officer under Section 59(1) of the Act. Therefore, the plea that the incident referred in the complaint of Mr. Godadbhai P.Bhangi has no reference to performance of duties by the respondent No.1 as Sarpanch and, therefore, powers under Section 59(1) of the Act could not have been exercised, cannot be accepted and is hereby rejected.

13. The argument that the complaint filed by Godadbhai P.Bhangi is malafide and, therefore, should not have been acted upon by the District Development Officer, has no substance. The reading of the complaint does not indicate that it is filed malafide. It is important to notice that the respondent No.1 has not initiated any proceedings under Section 482 of the Code of Criminal Procedure, 1973 for quashing the complaint in question. The law on quashing of a complaint as settled by the Supreme Court is very clear. As per the Supreme Court, allegations setforth in the complaint have to be seen and nothing further. Merely because the complainant had lost in the election or that he has filed suit challenging election of the respondent No.1, one need not jump to the conclusion that complaint is filed with bad intention and as it transpires now, even chargesheet is filed against the respondent No.1 which means that complaint cannot be branded as malafide action of the complainant. The claim that the complaint is malafide may be one of the defences which may be available to an accused and the same has to be established during the course of trial. Therefore, the respondent No.1 would not be entitled to the relief of stay of order passed by the District Development Officer suspending her from the office of Sarpanch on the ground that the complaint is filed malafide by Godadbhai P.Bhangi.

14. The plea that criminal proceedings in respect of an offence involving moral turpitude cannot be said to have been instituted against the respondent No.1 and, therefore, the District Development Officer was not justified in exercising powers under Section 59(1) of the Act, is merely stated to be rejected. The object with which the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is enacted by the Parliament and the strict provisions regarding bail as well as punishment would indicate that institution of criminal proceedings in respect of an offence punishable under the said Act will have to be regarded as one involving moral turpitude. Moreover, the Supreme Court

in J.Jaishankar v. Government of India and another, (1996)6 SCC 204 has held that an offence under Section 509 of the Indian Penal Code undoubtedly involves moral turpitude and it is not permissible for an employee who has committed an offence punishable under Section 509 of the Indian Penal Code to continue in service. The respondent No.1 is alleged to have committed an offence punishable under the Act of 1989 regarding which chargesheet is already submitted. The institution of complaint would exhibit dishonest, immoral and unethical conduct of the respondent No.1. Therefore, the plea that criminal case relating to an offence involving moral turpitude is not instituted against the respondent no.1 and, therefore, the respondent No.1 could not have been suspended from the office of Sarpanch, has no substance and is hereby rejected.

15. The last contention that the learned Single Judge has exercised jurisdiction vested in him having regard to the facts of the case and the said discretion being not arbitrary should be upheld by this Court, has no merits. It may be stated that the mandatory interim relief granted by the learned Single Judge has far reaching effect including setting at naught the order passed by the District Development Officer under Section 59(1) of the Act at admission stage. Further, by granting mandatory interim relief, the petition filed by the respondent No.1 is allowed at admission stage by holding that complaint filed by the person who has lost election against the respondent No.1, does not inspire confidence. This is not scope and ambit of a petition filed under Article 226 of the Constitution. Further, without any factual basis, the learned Single Judge has accepted the apprehension expressed by the learned advocate of the respondent No.1 that on the basis of order of District Development Officer, whole Panchayat is likely to be superseded. There is no manner of doubt that the learned Single Judge has power to grant mandatory interim relief if the facts of the case warrant grant of such relief, but, having regard to the nature of documents on the record of the petition, this Court is of the opinion that the learned Single Judge was not justified in granting interim relief. It is well to remember that suspension of the respondent No.1 from the office of Sarpanch is temporary measure adopted by the District Development Officer. If at the conclusion of trial the respondent No.1 is acquitted, she is bound to be reinstated on the post of Sarpanch of Ablauva Gram Panchayat. This interim measure during the pendency of criminal proceedings could not have been set at naught by mandatory interim order. On overall view of the matter, this Court is satisfied

that the interim order granted by the learned Single Judge is not well-founded and liable to be set aside. The appeal, therefore, will have to be accepted.

For the foregoing reasons, the appeal succeeds. Interim order dated February 13, 2003 passed in Special Civil Application No.516 of 2003 is hereby set aside. There shall be no order as to costs.

CIVIL APPLICATION NO. 1221 OF 2003

As Letters Patent Appeal No. 179 of 2003 is allowed by judgment dated May 5, 2003, Civil Application No.1221 of 2003 for interim relief does not survive. Hence, it is rejected. Rule issued therein is discharged. Interim relief granted therein vide order dated February 18, 2003 is hereby vacated. There shall be no order as to costs.

(J.M.Panchal,J.)

(A.M.Kapadia,J.)

(patel)